IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 8TH DECEMBER 2006 / 17TH AGRAHAYANA 1928

Crl.MC.No. 3209 of 2005(Y)

CC.1297/1999 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

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PETITIONER: ACCUSED NO.3 AND 4 IN C.C.NO.1297/1999:

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1. MRS. SUSAN JIMMY, AGED 40,
   W/O. JIMMY ELIAS, PATTASSERIL HOUSE, NADAMA,
   NEAR BOYS HIGH SCHOOL, TRIPUNITHURA.

2. ANNIAMMA RAVINDAR,
   W/O. RAVINDAR @ THAMPI ELIAS, RESIDING AT
   PATTASSERIL HOUSE, NADAMA, NEAR BOYS HIGH SCHOOL,
   TRIPUNITHURA.

BY ADV. SRI.PRAVEEN K. JOY
SRI.P.J.ANTONY JOSEPH MARIADAS

RESPONDENTS: STATE & COMPLAINANT:

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1. STATE OF KERALA,
   REP. BY PUPBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

2. K.M.SALI, S/O. LATE K.A.MOHAMMED,
   5E, KATTIKKARAN TOWERS, PROVIDENCE ROAD,
   ERNAKULAM, KOCHI-18.

3. PATTASSERIL AGENCIES,
   LAYAM ROAD, TRIPUNITHURA, REP. BY DR.SARAMMA ELIAS

4. DR. SARAMMA ELIAS, W/O. LATE C.N.ELIAS,
   PARTNER, M/S. PATTASSERIL AGENCIES, TRIPUNITHURA.

BY PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 08/12/2006, ALONG WITH CRMC NO. 3221 OF 2005
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.Nos.3209 of 2005 and 3221 of 2005

Dated this the 8th day of December 2006

O R D E R

The petitioners are accused 3 and 4 in two identical prosecutions initiated by the respondent/complainant. The first accused is a firm. The second accused is the managing partner of the firm who signed cheques on behalf of the firm. Petitioners 3 and 4, that is petitioners herein, are alleged to be partners of the firm.

2. The prosecution is under Section 138 read with 141 of the Negotiable Instruments Act. The petitioners have come to this court with the grievance that the prosecution has been initiated against him unfairly and unreasonably and without any justification. The mere fact that they are partners, cannot expose them to culpable liability under Section 138 read with 141 of the Negotiable Instruments Act, contends the learned counsel for the petitioner.

3. There is no representation for the respondent. I have been taken through the identical averments in the two complaints. With the help of the counsel, the precise averments against the petitioners have been identified as follows.

4. In the first paragraph of the complaint, it is alleged that the first accused is a partnership firm of which accused 2 to 4 are

partners. There is no dispute regarding that assertion at all. The only other relevant assertion/averment which relates to the petitioners appear in paragraph 2 and that reads as follows:

> "all accuseds are jointly and severally liable to pay the amount covered by the aforesaid dishonoured cheque."

5. There is no whisper of any other allegations against the petitioners herein. Of course, it is also stated that notice of demand was issued against them and they have not chosen to send a reply. In the notice also no better allegations are raised against the petitioners, it is submitted.

6. Now coming to the law, under Section 141 of the Negotiable Instruments Act, when the drawer of the cheque is company/partnership, all the directors /partners who are in charge of and responsible to the company/firm for the conduct of its affairs alone and not all partners have culpable liability. The question came up for consideration before the Supreme Court in SMS Pharmaceuticals Ltd. v. Neeta Bhalla [(2005) 8 SCC 89]. A Division Bench of this court had occasion to consider the same in Mymoonath Beevi v.State of Kerala [2005(4)KLT 174]. The position of law is squarely and clearly eminent in SMS Pharmaceuticals Ltd. v. Neeta Bhalla [(2005) 8 SCC 89] that necessary averments must be made in the complaint, the averments should indicate culpability with the help of Section 141 of the Negotiable Instruments Act. Averments which

are extracted already in this order and which appear in the complaint filed fall significantly short of the requisite averments to attract culpability under Section 141 of the Negotiable Instruments Act.

7. It follows that the prosecution against the petitioners is unjustified. This court does come across often these days of attempt to implicate all directors/partners of the company/partnership firm in prosecutions under Section 138 of the Negotiable Instruments Act without requisite averments in the complaint. It is certainly necessary for the learned Magistrates to be careful and cautious when they exercise jurisdiction under Section 203/204 Cr.P.C lest undeserving prosecutions against individuals may result. Complainants in their anxiety to somehow procure amounts which are due under the cheques may vexatiously array all partners/directors as accused. Necessary caution must certainly be exercised by the learned Magistrates before issuing process with the help of Section 141of the Negotiable Instruments Act for offence committed under Section 138 of the Negotiable Instruments Act.

8. In the result, these Criminal Miscellaneous Cases are allowed. C.C.No.1297/99 and 1298/99 pending before the learned Chief Judicial Magistrate, Ernakulam in so far as they relate to the petitioner herein shall stand quashed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006